IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE SIXTEENTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

AND
THE HON'BLE MR JUSTICE Ch.S.R.K. PRASAD

WRIT PETITION NO : 13481 of 2004

Between:

B.Vijaykumar, s/o Boyala Srinivasulu,aged 32 years,
r/o Tirupathi, Chittoor District.

..... PETITIONER

AND

1 The State of Andhra Pradesh, rep., by its Secretary,
Home Department, Secretariat Buildings, Hyderabad.
2 The Collector and District Magistrate, Chittoor.
3 The Superintendent of Central Prison, Charlapalli, R.R.District, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a writ of Habeas Corpus directing the respondents to produce Boyala Srinivasulu, s/o Venkata Ramana, aged 69 years, resident of Korlagunta, Tirupati Town, Chittoor District, presently detained in the Central Prison, Charlapalli, Ranga Reddy District, Hyderabad and release him forthwith by declaring the detention order passed by the second respondent as illegal and unconstitutional.

Counsel for the Petitioner:MR.K.SURESHREDDY

Counsel for the Respondent Nos 1 to 3: THE ADVOCATE GENERAL

The Court made the following :

RDER: (Per G.B.J,)

This Writ Petition is filed seeking writ of Habeas Corpus to direct the respondents to produce Boyala Srinivasulu S/o Venkata Ramana, aged 69 years, resident of Korlagunta, Tirupathi Town, Chittoor District detained in the Central Prison, Charlapalli, Ranga Reddy

District and release him forthwith by declaring the detention order dated 08-05-2004 passed by the second respondent as illegal and unconstitutional.

2. The second respondent-the Collector and District Magistrate, Chittoor passed the order of detention bearing No.ROC.C2/2768/2004, dated 08-05-2004 by exercising the power under Section 3(1)(2) r/w Sec. 2(a) and 2(g) of A.P. Prevention of Boot Leggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbing Act, 1986 (for short 'the Act').

3. In the grounds of detention, various details were given with regard to the involvement of the detenu making him liable under Section 379 of I.P.C., Section 29 of Wild Life (Protection) Act, 1972 and also Section 20(1)(d)(i) of A.P. Forest Act, 1967. Apart from submitting various contentions by the learned counsel for the petitioner, the principal contention raised by him in the writ petition is that the detaining authority has taken into consideration irrelevant matters for passing the detention order and therefore on this ground, without going in to the merits of the case, the detention is liable to be set aside.

4. The facts are not much in dispute. The order of the detention was passed by the Collector and the District Magistrate, Chittoor on 08-05-2004. The grounds of detention are as follows:

> "1. **(O.R.NO.78/2000-01 TIRUPATI RANGE DATED 24.10.2000**
>
> On 24.10.2000 at 10.00 AM you were traced as accused for illegally cut the Red Sanders and stocking the Red Sander logs in the well of Adanki Subramanyam Naidu, western side of the Vemuru village. The panhayatdars were brought to the scene of offence and in the presence of Panchayatdars the Red Sanders logs were removed from the well and counted, there are 16 Red Sanders logs weighing 1325 K.Gs valued at Rs.50,000/-. The Red Sanders logs were seized at the scene of offence by the forest officials. You were voluntarily confessed the committal of above offence. You were charged under section 20(I) C II, III, IV and (x) of A.P. Forest Act, 1967 punishable u/s 20(1)(d)(i) of said and also contravention of Rule 3 of A.P.Sandal wood and Red Sanders wood Transit Rules, 1969 read with Section

29(2)(b) of A.P.Forest Act, 1967 punishable u/s 29(4)(a)(i) of the said Act. Thus it is a quite evident that you are committing an offence of illicit cutting of Red Sanders causing willful destruction of valuable Red Sanders which is endangered species and national wealth.

2. O.R.NO.69/2003-04 S.V.NATIONAL PARK, TIRUPATI RANGE DATED 04.11.2003:

On 03/04.11.2003 on credible information the forest staff proceeded and laid watch at Taduku railway gate on Tirupati-Chennai road from 03.11.2003 mid night when they watching they received further information at about 4.00AM on 04.11.2003 that a lorry is being loaded with Red Sanders wood in a Mango garden neat Battikandriga Village. The staff went there and surrounded the loading point and found a lorry and Tractor with R.S. logs and also 3 motor Cycles along with the persons. On inspecting the lorry, Tractor theyhave found 227 Red Sanders logs weighing 6784 KGs valued at Rs.2,98,496/-. They have arrested you and your associates in the scene of offence. On interrogation you have also confessed committal of the above offence of illicit cutting of Red Sander Trees in Nagapatla Reserve Forest and arrested by the forest staff. Hence, you were charged u/s 379 IPC; Sec.20(1)C II, III, IV and (x) of A.P.Forest Act 196 punishable u/s 20(i)(d)(I) of said and also contravention of Rule 3 of A.P.Sandal wood and Red Sanders Wood Transit Rules, 1969 read with Section 29(2) (b) of A.P.Forest Act, 196 punishable u/s 29(4)(a)(i) of the said Act; responsible for the destruction of habitate of Wild life in S.v.Santuary, in contravention of Sec.29 of Wild life (Protection) Act 1972 and punishable u/s 51(1) of the said Act. Thus it is a quite evident that you are committing an offence of illicit cutting and storing of Red Sanders causing willful destruction of valuable Red Sanders which is endangered species and national wealth.

3. O.R.NO.87/2003-04 S.V.NATIONAL PARK, CHAMALA RANGE DATED 11.01.2004:

On 11.01.2004 at 4.00P.M the Forest officials while patrolling the pariapetu locality of Nagapatla R.F of S.V.National Park, Chamala Range heard the noise of some persons talking to each other and immediately the staff surrounded and caught hold of 5 accused. On interrogation the accused stated that you have came to their village and engaged them to go to Nagapatla Reserve Forest area, cut Red Sanders trees and to transport dressed Red Sanders logs to Narasingapuram @ 10 per Kg. You are also present at the scene of offence but after seeing the Forest officials you disappeared deep into the forests. You are the main accused in this illicit Red Sanders felling and smuggling. On inspecting the surrounding areas they have identified 36 Red Sanders weighing 1034 Kgs. Valued at Rs.45,496/-

accordingly it was seized. You were charged u/s 379 IPC Sec. 20(1)C II, III, IV and (x) of A.P. Forest Act 1967 punishable u/s 20(1)(d)(i) of said and also contravention of Rule 3 of A.P. Sandal Wood and Red Sanders wood Transit Rules, 1969 read with Section 29(2)(b) of A.P. Forest Act, 1967 punishable u/s 29(4)(a)(i) of the said Act; responsible for the destruction of habitat of Wild life in S.V.Sanctuary, in contravention of Sec. 29 of wild Life (Protection) Act 1972 and punishable u/s 51(1) of the said Act. Thus, it is a quite evident that you are committing an offence of illicit cutting and storing of Red Sanders causing willful destruction of valuable Red Sanders which is endangered species and national wealth.

4. O.R.NO.111/2003-04 S.V.NATIONAL PARK, CHAMALA RANGE DATED 02.03.2004:

ON 02.03.2004 AT 9.30 P.M the officials conducting patrolling duty in Thalakona R.F. they observed some lighting in the Reserve Forest i.e. 30th KM in Bhakrapet-Tirupati Ghat road. On keen observation they suspected that there are persons in the Reserve forest area. The staff tried to approach you at scene of offence, but on seeing the Forest Officials you and your accomplice were ran away from the scene of offence. When you were running the staff focused the Torchlight and identified as you along with other accomplice. On thorough search the forest staff have detected 122 Red Sanders logs, weighing 2913 Kgs. Valued at Rs.1,72,172/- and seized at the scene of offence. Hence, you were charged u/s 379 IPC ; Sec.20(i) C.II,III, IV and (x) of A.P. Forest Act 1967 punishable u/s 20 (1)(d)(i) of A.P. Forest Act 1967, Sec.29 of Wildlife (Protection) Act, 1972 punishable u/s 51 of said Act. Thus, it is a quite evident that you are committing an offence of illicit cutting and storing of Red Sanders causing willful destruction of valuable Red Sanders which is endangered species and national wealth.

5. o.r.no.116/200304 S.V. NATIONAL PARK, CHAMALA RANGE DATED 30.03.2004:

ON 30.03.2004 you along with accomplice were found illegally entered in to the Reserve Forest cut the Red Sanders and stored the Red Sander logs at Srivarimettu of Nagapatla East border of S.V. National Park, Chamala Range. On seeing the Forest Officials you and your associates escaped from thescene of offence. The Forest Officials identified you on the escaped persons, as you are the regular Red Sanders smuggler involved in many ases earlier. On inspecting the surrounding forest area the staff identified 18 Red Sanders logs weighing 432 Kgs valued t Rs.19,008/ and seized by the forest officials. You were charged under u/s 379 IPC ; Sec.20(i) C.II,III, IV and (x) of A.P. Forest Act 1967 punishable u/s 20 (1)(d)(i) of A.P. Forest Act 1967, Sec.29 of Wildlife (Protection) Act, 1972

punishable u/s 51 of said Act. Thus, it is a quite evident that you are committing an offence of illicit cutting and storing of Red Sanders causing willful destruction of valuable Red Sanders which is endangered species and national wealth.

6. O.R.NO. 01/200405 S.V.NATIONAL PARK,CHAMALA RANGE DATED 05.04.2004.

On 05.04 at 4.30 P.M. while patrolling in Nagapatla East beat of Cheekati kona locality the forest staff heard the nose of you and your accomplice. Then they slowly surrounded and caught hold of one person of your associate and others numbering about 20 offenders escaped from the scene. They tried to catch them, but in vain. They found 52 Red Sanders Logs weighing 1750 Kgs valued a Rs.91,000/-. On interrogation the accused Tirupati Penchulaiah has given confessional statement stating that he and other associates came to Nagapatla forests for felling of Red Sanders trees to supply Red Sanders wood to you. You are the mastermind inthis case. Hence, you were charged u/s 379 IPC ; Sec.20(i) C.II,III, IV and (x) of A.P. Forest Act 1967 punishable u/s 20 (1)(d)(i) of A.P. Forest Act 1967, Sec.29 of Wildlife (Protection) Act, 1972 punishable u/s 51 of said Act. Thus, it is a quite evident that you are committing an offence of illicit cutting and storing of Red Sanders causing willful destruction of valuable Red Sanders which is endangered species and national wealth.

It is therefore, established that cases booked against you under A.P. Forest Laws failed to curb your activities which are found to be dangerous as you are indulging in cutting, storing and transporting the Red Sanders, thus causing much damage to the national wealth. Your presence in open society is prejudicial to public order as your accomplices and you are terrorizing the witnesses on your nefarious activities. You are therefore, a 'goonda' under Section 2(g) of A.P. Prevention of Boot Leggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act,1986."

5. From the aforesaid grounds, it is clear that the detaining authority has taken into consideration the provisions contained in Section 379 of I.P.C., Wild Life (Protection) Act and Forest Act. In similar and identical circumstances, this Court in W.P.No.11373 of 2004 dated 9.8.2004 held that it amounts to consideration of irrelevant material. In the instant case, even though Section 379 I.P.C. is covered by Chaper XVII of I.P.C., yet, the detaining authority has referred to the provisions of Forest Act under Section 20 as referred above. Under those

circumstances, we are convinced that it is a clear case of passing the detention order on irrelevant and extraneous grounds and accordingly it vitiates the detention order in its entirety. In view of this, we need not go further into the contentions of the learned counsel including the one that no documents were furnished to him along with detention order.

6. Accordingly, the Writ Petition is allowed on this sole ground. The order of detention dated 08-05-2004 is set aside and the petitioner shall be set at liberty, if he is not required in any other case. It is, however, left open to the respondents to take appropriate action in accordance with law under the regular criminal laws.

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G.BIKSHAPATHY, J

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CH.S.R.K.PRASAD,J

Date:**16th August,2004.**

Ccm

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this the Monday the sixteenth day of August, two thousand and four.

ASSISTANT REGISTRAR

To

1 The Secretary to Government of A.P., Home Department,

Secretariat, Hyderabad.

2 The Collector and District Magistrate, Chittoor.
3 The Superintendent of Central Prison, Charlapalli, R.R.District, Hyderabad.

4 2 CCs to the Advocate General, A.P. High Court Buildings, Hyderabad(OUT)

5 2 CCs to the G.P. for Home, A.P.High Court Buildings, Hyderabad(OUT).

6 2 CD Copies.